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State of Utah

DEPARTMENT OF NATURAL RESOURCES

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November 3, 2015

Sarah Fields
Uranium Watch
76 South Main Street, #71
P. O. Box 344
Moab, Utah 84532

Subject: Response to Concerns about Division Enforcement of Temporary Cessation and Reclamation Requirements

Dear Ms. Fields:

This letter is in response to your letter and memorandum concerning enforcement of the rules regarding temporary suspension and reclamation of mining operations. I apologize for the delay in responding to your concerns. At this time I am only responding to the request for remedy section of your memorandum while recognizing these remedies need to be applied to the specific mines noted as well as to others.

From a regulatory viewpoint, the overriding concern is the lack of clarity with regard to the definition of "suspension" or "temporary suspension." It is clear that reclamation should be required at sites that are not being properly maintained, do not have right of entry, do not have adequate reclamation surety, or are not paying permit fees, but less clear is the requirement as it relates to sites that are not producing ore but where the operator regularly conducts maintenance to protect the environment and public health and safety and otherwise complies with regulatory requirements.

Listed below are your comments followed by the Division's response.

1. DOGM staff and Division Board immediately start enforcing the existing statutes and regulations applicable [to] temporary suspension of operations for small and large hard rock mining operations in Utah.

Staff of the Division of Oil, Gas and Mining (Division) enforce the existing statutes and regulations as they are written and interpreted and as they apply to any given operations. Both Uranium Watch and the Division recognize that the rules regarding temporary suspension need to be clarified which will necessitate development of new rules to reduce confusion.



2. DOGM staff clarify the definition of suspension of operations and request that mine operators provide a notice of suspension of operations at the time that operations cease, as a courtesy. (The regulations stating that they do not have to do this can be amended later.)

The Division agrees that a rule change is needed, but changes must go through a process of public notice and approval from the Board of Oil, Gas and Mining. Changes to the statute must be done by the Utah State Legislature. The Division may adopt policies and interpretations of the rules and statute, but these can be subject to appeal.

The Division will work to clarify the rules and will attempt to have a first draft prepared by February 1, 2016. This will go through an informal review process which includes various stakeholders. After appropriate changes are made in response to comments, the rules are proposed formally to the Board.

3. DOGM staff clarify when an operator must provide notice of the suspension of a mining operation expected to exceed 5 years.

This will be included in the rule changes as discussed in item 2 above.

4. DOGM develop a generic letter and send to all mine operators explaining the 5-year and 10-year extension of non-operation notice and approval processes.

This is a reasonable request, but a generic letter should be delayed until the rules have been clarified.

5. DOGM immediately notify those mine owners that have not submitted a timely request for an extension of a 10-year period of non-operation to the Board that they must commence reclamation, a required by law.

The Division requires reclamation of sites that have been clearly inactive for five or ten years without approval from the Board for an extended suspension period. These include sites where the operator has lost right of entry, has not paid permit fees, and where the reclamation surety is not up to date. These issues are normally checked, and the reclamation requirements are made, in association with routine inspections.

There are other examples where permit fees are up to date, the reclamation surety is adjusted as required, and the operator regularly checks the site and performs maintenance as needed. Maintenance may be considered "mining operations" as defined in the rules, so without

clarification of the definitions, it would be inappropriate for the Division to require reclamation in these cases.

6. DOGM review all small and large mine permits to determine compliance with Utah Code Ann. 40-8-16(2)(c) and Rules R647-3-113 and R647-3-117 with respect [to] temporary cessation of operation.

As stated above, the Division reviews the status of operations as part of inspections and requires reclamation of sites that have been inactive for five or ten years, especially those where the operator has lost right of entry, has not paid permit fees, and has not maintained the surety.

7. DOGM commence a review of Rules R647-3-113 and R647-4-117 with respect [to] temporary cessation of operation and DOGM staff's enforcement of those rules with the intent of understanding the history of compliance and enforcement and the proposing of new rules. Uranium Watch would like to be part of the process to develop a new set of comprehensive enforceable rules applicable to the temporary cessation of operation of small and large mining operations. The new rules must be protective of the public health and safety and the environment. An example of more comprehensive rules applicable to periods of non-operation are those adopted by the State of New Mexico.

As stated previously, the Division will commence a review of the rules relating to temporary suspension of mining operations. The Division would welcome input from Uranium Watch and other organizations and will review the rules adopted by the State of New Mexico. The rules will need to be adapted to the requirements of the Utah Mined Land Reclamation Act, including those related to public health and safety, and the Division will need to consider comments from all stakeholders.

Thank you for your interest in the Minerals Regulatory Program and for bringing these concerns to our attention. Please contact me at 801-538-5320 or Paul Baker at 801-538-5261 if you have questions.

Sincerely,



Dana Dean, PE
Associate Director of Mining